

Local Union No. 1, Chicago and Northeast Illinois District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO and Northern Window Products, Inc. and Glaziers, Architectural Metal and Glassworkers' Local Union No. 357, International Brotherhood of Painters and Allied Trades, AFL-CIO. Case 3-CD-430

February 28, 1991

**DECISION AND DETERMINATION OF
DISPUTE**

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND RAUDABAUGH

The charge in this Section 10(k) proceeding was filed July 20, 1990, by the Employer, alleging that the Respondent, Carpenters Local Union No. 1 (the Carpenters), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Glaziers Local Union No. 357 (the Glaziers). The hearing was held August 9, 1990, before Hearing Officer Danielle J. Faulkner. Thereafter the Employer filed a brief in support of its position.

The National Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a Michigan corporation, sells and installs replacement windows. Its principal place of business is in Brighton, Michigan. During the past 12 months the Employer purchased and received at its Illinois construction site goods and materials valued in excess of \$50,000 from points located outside the State of Illinois. During that same time period, the Employer received more than \$250,000 in gross revenues. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Carpenters and the Glaziers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

In November 1989, the State of Illinois awarded a contract to the Employer (Northern) to remove and replace windows at the State of Illinois Building at 160 North LaSalle Street in Chicago. In May 1990, Mark Caster, Northern's owner and president, with other employers who are not parties to this proceeding, formed the Retrofit Employers Association, Inc. That Association,

in June 1990, entered into a contract with the Glaziers that recognizes it as having jurisdiction over work on retrofit or replacement projects described as the unloading, distribution, assembly, and installation of preglazed windows, panning systems, and accessories, including the demolition and removal of existing sashes, stops, and interior trim and the caulking, shimming, and blocking necessary for such work. The contract will expire in 1993.

Northern started its window replacement project at the State of Illinois Building on July 9, 1990, using only employees it employed out of its Michigan business location who were represented by the Glaziers. On July 10, the Carpenters notified Northern orally and in writing that Northern's employees were performing carpentry work at the State of Illinois Building and that they were not receiving wages and benefits that conformed to area standards. On that date, Jim Holland, the Carpenters' job steward, asked James Roy, Northern's foreman at the State of Illinois Building site, to present his credentials. Roy then showed Holland his Glaziers card. Somewhat later Casey Vasic and Bob Quanstrom, the Carpenters' business agents, along with Ken Wallendorf, the business representative for Glaziers Local No. 27 (the Chicago local), approached Roy. Vasic checked Roy's union card and then asserted that Northern's employees had no business being there. Vasic also said that if Northern's employees refused to leave the job, he would throw up pickets and pull employees off the site. Vasic next saw Rob Bolt, the job superintendent for Walsh Construction Co. of Illinois, the project's general contractor and again threatened to take the carpenters off the job. Vasic, Quanstrom, Wallendorf, and Bolt then met with Bob Nowak, Walsh's senior project manager. Nowak's testimony, which was corroborated by Bolt, indicated that Vasic told him the work belonged to employees represented by the Carpenters and that Wallendorf had confirmed it was the Carpenters' work. Vasic added that if Northern continued to do the work the Carpenters would have to consider Northern nonunion and therefore would leave the job and picket the site. Although Vasic in his subsequent testimony denied the gist of the conversation as recounted by Nowak and Bolt, he admitted that he had said that the Carpenters would picket, albeit by following procedures that would enable it to engage in area standards picketing. Vasic admitted that he said he would "pull our carpenters off the job."

On July 10, the Carpenters also wrote general contractor Walsh stating that Walsh had violated its contract by subcontracting work to Northern. Vasic testified that the letter was sent because the subcontracting clause stipulated that the general contractor "would not subcontract carpentry work outside our bargaining unit." Vasic also admitted that he asked Nowak to

delay the window work until the matter could be settled. Subsequently, the general contractor asked Northern to keep its employees off the job. Thereafter, Northern filed the instant unfair labor practice charge against the Carpenters.

B. Work in Dispute

The disputed work involves the removal of old windows and the installation of new ones at the State of Illinois Building, 160 North LaSalle, Chicago, Illinois.

C. Contentions of the Parties

Northern contends that the disputed work should be awarded to its employees represented by the Glaziers in view of the following factors: its collective-bargaining agreement with the Glaziers covering the work in dispute and the absence of any relevant collective-bargaining agreement between Northern and the Carpenters; Northern's traditional assignment of the work to its own employees and its preference for that assignment; area and industry practice; its employees' requisite skills, and prior Board decisions. Northern also contends that no common method of adjustment exists to which all parties are bound.

Although the Carpenters has submitted no posthearing brief, the testimony it presented and the exhibits it introduced at the hearing indicate that it contends that no jurisdictional dispute exists because Glaziers Local 27 has disavowed interest in the work. The Carpenters further contends that its interest was merely in enforcing area standards and that there is an agreed-on method for voluntary resolution of the dispute. It nevertheless contends that area and industry practice supports the performance of the disputed work by employees it represents and that its members have the experience and skills to perform that work.

D. Applicability of the Statute

On July 10, 1990, the Carpenters claimed the work in dispute for the employees it represents and threatened a work stoppage in order to compel assignment of that work to its employees. That the business representative of Glaziers Local 27 may have disclaimed interest in the disputed work is of no import inasmuch as Local 27 does not represent the Northern employees and is not a party in interest. Furthermore that disclaimer cannot be imputed to Glaziers Local 357, the party in interest, because that local did not join in the disclaimer and, more importantly, its members kept performing the work in dispute both before and after the Carpenters' threatened picketing. Accordingly, we find that no effective disclaimer of the work in dispute has occurred. See *Operating Engineers Local 150 (Austin Co.)*, 296 NLRB 928, 939 (1989). Consequently, we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.

Although the Carpenters contends that there is an agreed-on method for resolving jurisdictional disputes such as the one here, it relies on an agreement to which Glaziers Local 27 is a party for that contention. As noted above, however, Local 27 is not a party in interest in the instant dispute. Moreover, the evidence shows that neither the Employer nor Glaziers Local 357 is bound to the dispute resolution process advanced by the Carpenters. Accordingly, we find that there exists no agreed-on method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act and that the dispute is properly before the Board for determination. See *Sheet Metal Workers Local 141 (Debra Construction)*, 245 NLRB 310, 312 (1979).

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Certification and collective-bargaining agreement

The parties stipulated that there is no Board Order covering the disputed work or Board certification determining the bargaining representative of Northern's employees. In June 1990, the Retrofit Employer's Association, of which Northern is a member, entered into a collective-bargaining agreement with Glaziers Local No. 357, of which Northern's employees are members. That agreement, which encompasses the type of work here in dispute, expires in 1993 and is therefore current. There is no evidence that Northern is a party to any other collective-bargaining or jurisdictional agreement. Consequently this factor favors assignment of the disputed work to Northern's employees represented by the Glaziers.

2. Company preference and past practice

The record is clear that Northern prefers to employ its own work crew and customarily has employed that crew when it has worked on projects. Thus this factor favors assignment of the work to Northern's employees represented by the Glaziers.

3. Area and industry practice

The testimony and documentary evidence presented shows that members of the Carpenters and the Gla-

ziers, as well as members of the Iron Workers and Laborers Unions, have all done window replacement work in the Chicago area. In addition, many projects in the Chicago area have been executed by nonunion employers, including several by Northern before it helped form the Retrofit Employers Association which entered into the collective-bargaining agreement with the Glaziers. Because work crews whose members have belonged to different unions or to no union at all have performed the type of work in question, information pertaining to this factor favors neither group of employees.

4. Relative skills

The work in question involves measuring, cutting, and drilling of wood, metal, and glass. Although Northern claims that in the past carpenters obtained from the local hiring hall were unable to adapt their skills to the work required of them, witnesses for the Carpenters testified that they use the same tools and perform the same functions as employees represented by the Glaziers. The Carpenters' witnesses further testified that at least 200 of its members were experienced in window replacement work. The evidence pertaining to this factor is inconclusive.

5. Economy and efficiency of operations

Northern's employees have worked together for several years and, except for cutting the panning, which is done by only its most experienced employees, perform the various functions involved in the removal and replacement of windows interchangeably. Assignment of the work to employees represented by the Carpenters could result in considerable fragmentation because the record indicates that the carpenters would defer to other employees for the performance of certain aspects of the work in dispute—for example, for portions of window removal and cleanup, for metal sash installation and some metal panning work, and for glass replacement.¹ In addition, witnesses for Northern testified that caulking, a task regularly done by its employees, is infrequently done by carpenters and that it would require considerable time to train them to do this aspect of the work. The evidence thus indicates

¹ The Carpenters either has declared in this proceeding or has apparently agreed in related collective-bargaining arrangements that these three segments of the work in dispute are within the respective craft jurisdictions of the Laborers, Iron Workers, and the Glaziers Unions.

that the most efficient way of performing the work in question is to assign it to Northern's employees represented by the Glaziers because they can perform the entirety of the work involved in window replacement and installation.

6. Joint Board determinations

No evidence was presented about determinations by the National Labor Relations Board or dispute board awards that involve this Employer. Accordingly, evidence on this factor favors neither group.

Conclusions

After considering all the relevant factors, we conclude that employees represented by the Glaziers are entitled to perform the work in the dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference and past practice, and economy and efficiency of operations.

In making this determination, we are awarding the work to employees represented by Glaziers Local No. 357, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Northern Window Products, Inc., represented by Glaziers, Architectural Metal and Glassworkers' Local Union No. 357, International Brotherhood of Painters and Allied Trades, are entitled to remove and replace windows at the State of Illinois Building at 160 North LaSalle Street, Chicago, Illinois.

2. Local Union No. 1, Chicago and Northeast Illinois District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Northern Window Products, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Local Union No. 1, Chicago and Northeast Illinois District Council of Carpenters, shall notify the Regional Director for Region 13 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.